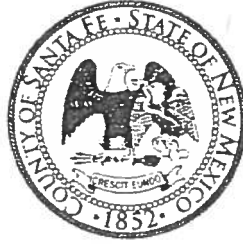


**Daniel “Danny”  
Mayfield**  
*Commissioner, District 1*

**Miguel M. Chavez**  
*Commissioner, District 2*

**Robert A. Anaya**  
*Commissioner, District 3*



**Kathy Holian**  
*Commissioner, District  
4*

**Liz Stefanics**  
*Commissioner, District  
5*

**Katherine Miller**  
*County Manager*

**CASE NO. PCEV 14-5160  
VACATION OF ARCHEOLOGICAL EASEMENT  
UNIVEST-RANCHO VIEJO LLC, APPLICANT**

**ORDER**

**THIS MATTER** came before the Board of County Commissioners (hereinafter referred to as “the BCC”) for hearing on June 10, 2014, on the Application of Univest-Rancho Viejo LLC (hereinafter referred to as “the Applicant”) to amend a plat to vacate a platted archeological easement on 118.670 acres. The BCC, having reviewed the Application and supplemental materials, and staff reports and having conducted a public hearing on the Application, finds that the Application is well-taken and should be granted, and makes the following findings of fact and conclusions of law:

1. The Applicant requests a plat amendment to vacate a platted archeological easement, located in La Entrada Phase I Subdivision, within Section 20, Township 16 North, Range 9 East (“the Property”).

2. The archeological easement is currently located in open space on 118.670 acres, as established on the plat for La Entrada Phase I subdivision, recorded in the Office of the Santa Fe County Clerk at Book 643, page 12.

3. The Applicant has stated that due to reconfiguration of some private roads in the area, the lot configuration will change, placing residential lots in the open space where the archeological site is located. That reconfiguration is not at issue in this approval, only the removal of the archaeological easement. A subsequent application will be filed to request that the land no longer subject to the easement be designated for residential lots and that land elsewhere in the subdivision be designated as open space.

4. The Applicant has verified that there are no lots with homes existing in the area where the archeological easement is located. However, there have been lots sold and developed within the subdivision in the general vicinity of the subject easement that the Applicant stated would not be affected by the vacation of the archeological easement.

5. An archaeological treatment plan for the subject archeological site (LA 145650) was submitted to the State Historic Preservation Office (SHPO) by the Applicant/Archaeologist on September 16, 2013. SHPO authorized the Applicant to proceed with the treatment plan. A Preliminary Report on the Treatment of the site was prepared and submitted by the Archaeologist to (SHPO) for review on March 5, 2014.

6. The State Historic Preservation Office concurred with the findings of the report that the archeological easement is no longer eligible for listing in the State Register of Cultural Properties or the National Register of Historic Places because the treatment plan implemented at the site has already recovered the site's significant information. A letter from archaeologist Michelle Ensey on behalf of the State of New Mexico, Department of Cultural Affairs, Historic Preservation Division dated May 12, 2014 confirmed her support for removal of the non-disturbance easement.

7. Article V, § 5.7.1 (Cause) of the Land Development Code states any Final Plat filed in the office of the County Clerk may be vacated or a portion of the Final Plat if:

- a) The owners of the land proposed to be vacated sign an acknowledgment statement, declaring the Final Plat or a portion of the Final Plat to be vacated, and the statement is approved by the Board; or
- b) The Board finds that a plat was obtained by misrepresentation or fraud and orders a statement of vacation to be prepared by the County.

8. Article V, § 5.7.2 (Action) of the Land Development Code states: “Action shall be taken at a public meeting. In approving the vacation of all or a part of a final plat, the Board shall decide whether the vacation will adversely affect the interests of persons on contiguous land or of persons within the subdivision being vacated. In approving the vacation of all or a portion of a final plat, the Board may require that roads dedicated to the County in the final plat continue to be dedicated to the County.”

9. Article V, § 5.7.3 (Filing) of the Land Development Code states: “The approved statement declaring the vacation of a portion or all of a final plat shall be filed in the office of the County Clerk.”

10. The Application and accompanying materials submitted by the Applicant, together with the proposed amended plat, meet the requirements for an acknowledgment statement, declaring the Final Plat or a portion of the Final Plat to be vacated.

11. Staff supports amendment of the Final Plat to remove the archaeological easement, and recommends the following condition of approval: The Applicant shall record the portion of the Final Plat (La Entrada Phase I) affected by the vacated archeological easement with the Santa Fe County Clerk’s Office.

12. The Applicant agreed with staff’s condition.

13. No member of the public spoke in favor or opposition to the Application.

14. The application is well taken and should be granted.

**WHEREFORE**, the Board of County Commissioners of Santa Fe County hereby approves the request to amend the plat by vacating the platted archeological easement in the La Entrada Phase I residential subdivision, subject to the Applicant recording the amended portion of the Final Plat (La Entrada Subdivision I) affected by the vacated archeological easement with the Santa Fe County Clerk's Office.

**IT IS SO ORDERED.**

This Order was approved by the Board of County Commissioners of Santa Fe County on this \_\_\_\_ day of \_\_\_\_\_ 2014.

**BOARD OF COUNTY COMMISSIONERS**

By: \_\_\_\_\_  
Daniel W. Mayfield, Chair

**ATTEST:**

\_\_\_\_\_  
Geraldine Salazar, County Clerk

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Gregory S. Shaffer, County Attorney

The motion passed by unanimous [4-0] voice vote. Commissioner Chavez was not present for this action.

- VII. B. 2. **BCC CASE # 14-5160 Univest-Rancho Viejo Archaeological Easement Vacation** Univest-Rancho Viejo LLC, Applicant, James W. Siebert, (James W. Siebert and Associates Inc.), Agent, request approval to vacate a platted archaeological easement on 118.670 acres. The property is located at 65 Rancho Viejo Blvd., within Section 20, Township 16 North, Range 9 East, Commission District 4

MIKE ROMERO: Good evening, Commissioners. The subject archaeological easement is located in the La Entrada Phase 1 residential subdivision and was created through La Entrada Phase 1 Residential Subdivision Plat in 2006. The area where the archaeological easement is located is currently open space. The applicant has stated that due to reconfiguration of some private roads in the area, the lot configuration will change, placing residential lots in the open space where the archaeological site is located. The applicant states that the open space will be relocated elsewhere in the subdivision.

The applicant has verified through the owners, Rancho Viejo, that there are no lots with homes existing in the area where the archaeological easement is located. However, there have been lots sold and developed within the subdivision east of Via Sagrada that the applicant claims will not be affected by the vacation of the archaeological easement.

An archaeological treatment plan for the subject archeologist site was submitted to the State Historic Preservation Office by the Applicant/Archaeologist on September 16, 2013. SHPO authorized the Applicant to proceed with the treatment plan. A Preliminary Report on the treatment of the site, was prepared and submitted by the archaeologist to SHPO for review on March 5, 2014. The State Historic Preservation Office concurred with the findings of the report that the archaeological easement is no longer eligible for listing in the State Register of Cultural Properties or the National Register of Historic Places because the treatment plan implemented at the site recovered the site's significant information.

Staff recommendation, approval to vacate a platted archaeological easement on 118.670 acres, within the La Entrada Phase 1 Subdivision, subject to the following staff condition:

1. The Applicant shall file the portion of the Final Plat affected by the vacated archaeological easement with the County Clerk's Office.

I stand for any questions.

CHAIR MAYFIELD: Mr. Romero, I have a question. On page two of your summary could you just explain B to me please?

MR. ROMERO: On B, Mr. Chair. The Board finds that the plat was obtained by a misrepresentation or fraud and orders an order of statement of vacation to be prepared by the County.

CHAIR MAYFIELD: Yes. What Board found that this plat was – oh, that's stating what the law says, okay. Thank you, Commissioner.

Give me one second, Mr. Romero. Thank you and if we could go to Exhibit 6 really quick. So Exhibit 6 is in reference to the fourth paragraph and its indicating that it is "...no longer eligible for listing in the State Registry for Cultural Properties and the National Registry of Historic Places. Excavations have been recovered and all significant information from the site and the non-disturbances can be removed from the plat." So there has been studies out there and they looked at all the land?

MR. ROMERO: Mr. Chair, Commissioners, that is correct. The applicant did hire a private archaeologist to conduct studies on the site. Their archaeologist spoke with and was in contact with Michelle Ensey with SHPO and she concurred with the report from the archaeologist.

CHAIR MAYFIELD: Thank you. Mr. Romero, you stated that they will be moving the open space to another area; where will that be moved to?

MR. ROMERO: Mr. Chair, Commissioners, at this point in time I am not clear as to where they are going to move it. The agent can probably reflect on that question better than I can.

CHAIR MAYFIELD: Thank you so much, Mr. Romero. With no other questions, would the applicant care to address the Commission.

[Duly sworn, Jim Siebert testified as follows]

JIM SIEBERT: My name is Jim Siebert. My address is 915 Mercer. I had asked Steve Townsend, the archaeologist, if he could attend tonight and he had a prior commitment so I'm going to do my very best to answer your questions. The nature of the site itself is that it was a hearth that apparently was for more migratory type hunting that took place in the area. Half of the hearth is actually missing because it has eroded away over time. There was also scattered lithics that were flint chips. They actually probably not be worthy of having a designation for historic preservation by themselves and it is still in detriment on the part of the archaeologists as to whether there is a relationship between the flint chips and the hearth. He believes that maybe there is a relationship but he is not certain on that.

There is some testing still going on at the site. There would be pollen evaluation and Carbon 14 testing and these take months in order to get back the results. So there will be some additional information that will be provided to SHPO and the process is SHPO – you provide a treatment recommendation to SHPO. SHPO either agrees or doesn't agree or makes comments on the treatment process. And then the site is cleared and a report is submitted. And then determination of what that site really consisted of. So you're actually getting more information now than if you hadn't remediated the site.

With that, I'll answer any questions you might have.

CHAIR MAYFIELD: Commissioners, any questions of the applicant? Mr. Siebert, I have one that I asked Mr. Romero earlier. Where will you be proposing to move the open space to?

MR. SIEBERT: Actually, we will be moving more compared to the prior subdivision, more open space to the interior of the subdivision and more open space on the exteriors of the subdivisions. So you're actually going to end up with more open space than we began with than the prior subdivision.

CHAIR MAYFIELD: Thank you.

COMMISSIONER STEFANICS: Mr. Chair.

CHAIR MAYFIELD: Commissioner Stefanics.

COMMISSIONER STEFANICS: Thank you. Mr. Siebert, is the intent here to do more infill with the idea of putting open space on the interior and the exterior?

MR. SIEBERT: Well, actually the problem in the past has been that there has been retaining walls with substantial height to them. There's a cost to that and there an aesthetic problem with that. So in reconfiguring some of the lots what we've done is created areas in the interior where we can avoid those retaining walls – have slopes and then areas in the inside where trails and paths can be created.

COMMISSIONER STEFANICS: Thank you. I have a question for staff, Mr. Chair.

CHAIR MAYFIELD: Yes, please.

COMMISSIONER STEFANICS: So, Mr. Romero, have you – I know, I see the staff recommendation – but have you identified that there will not be a loss of open space?

MR. ROMERO: Mr. Chair, Commissioner Stefanics, talking with the applicant or talking with the agent and with fellow staff – I've been out to the site. I've looked at the site. As far as exactly, to kind of go back again, as far as exactly as to where the open space is going to be located, I think Mr. Siebert answered that but as far as verification –

VICKI LUCERO (Building and Development Service Manager): Mr. Chair, Commissioner Stefanics, at this point they are just requesting a vacation of the archaeological easement. So the open space will remain. They will have to come with a separate application to reconfigure the lots and then at that point we would make sure that the open space was the same or was greater. That it wasn't less than 50 percent.

COMMISSIONER STEFANICS: Okay, so, Mr. Chair, Ms. Lucero, what I'm hearing is this hearing is strictly to vacate the archaeological site and we will later deal with the open space area.

MS. LUCERO: Mr. Chair, Commissioner Stefanics, that is correct.

COMMISSIONER STEFANICS: Thank you very much. Thank you, Mr. Chair.

CHAIR MAYFIELD: Thank you, Commissioner Stefanics. This is s a public hearing. Is there anybody from the public wishing to comment on this case in front of us tonight? Please come forward.

[Duly sworn, Glen Smerage testified as follows]

GLEN SMERAGE: Good evening. I'm Glen Smerage of 187 East Chili Line in Rancho Viejo. I would like to demonstrate to Warren Thompson and Univest tonight that I am not always against their pleasures and dreams.

I think from the evidence that is presented that it is reasonable to vacate this easement. However, if the public is going to do Univest a bit of favor like this, I think it's incumbent to give some public consideration. In particular, I request that you make two requests, actually I'd prefer demands of Univest. If this land is going become unencumbered, I think we need to have some indication, very specific indication from Univest as to what will be the future and probably not to distant fate of this land. Will it be filled with four or five

lots as at least one plat I've seen would indicate? If so, there should be specific statement in your brief and requirement in order for you to approve this request.

Second, and more importantly perhaps, if this was open space by virtue of the easement we should be expecting identify and commitment of a corresponding open space within Phase 1 of La Entrada so that it is an integral part of that whole project and open space for those residents to use and enjoy.

Now, I say this, I make this request that you make those two demands of Univest because since a good two years ago we have learned that Univest in contrast to about 15 years ago when it had a great vision for what Rancho Viejo should and perhaps would be and really has become through the year 2012, it appears since the early 2012 that Univest is intent in becoming a very common, typical, developer trying to make the land just be commodity for the making of money. Their proposals in the last two years have been contrary to the best interest of the residents in Rancho Viejo and the community itself., the development itself in that original vision that they had.

Most of us don't trust Univest to have good intentions to work with residents of the community and come up with good compatible worthwhile developments.

So in summary I have no qualms except for these two requests about you granting this removal of the easement. But we must know as a public, as residents of Rancho Viejo what Univest has up its sleeves for these particular lots and if they get put into housing, house lots, and how many – we need to have a corresponding commitment of open space in Phase 1 of La Entrada.

CHAIR MAYFIELD: Thank you, Mr. Smerage. Ma'am, do you care to come forward?

[Duly sworn, Kathy Brown testified as follows]

KATHY BROWN: Kathy Brown, 83 Via Rio Dorado, Santa Fe. It's not so much information as a question or two and clarification.

In that wonderful book coming in what a wealth of information about so many things, on the table right coming in the door. And so my question is with regard to one of the letters in there I think from that SH whatever it is, but, anyway, I just wanted to clarify or see who would clarify and for the record, that the correct space was looked at because there was apparently some confusion about the Dawson survey of plat numbers, 145658 versus 145650 and the documentation seems to be there but I'm not expert as to whether the right area of land is being looked at and approved. So that's my question.

CHAIR MAYFIELD: Vice Chair Anaya.

COMMISSIONER ANAYA: Mr. Chair, I think that's a reasonable question. Staff, are we 100 percent certain that we've analyzed the appropriate site and the applicant has reviewed and provided recommendations for the appropriate parcel?

MR. ROMERO: Mr. Chair, Commissioner, that is correct. It was reviewed. Dawson Surveys when they did the plat for the archaeological site number there's a few archaeological sites that are indicated on the plat and what the surveyor did was he mistakenly put the same archaeological site number as to where this one that is being proposed to be vacated at. But it was confirmed through SHPO and it was confirmed through Dawson Surveys and the archaeologist and myself. When I went out on the field there is a



picture that is part of the exhibit that actually shows the number and the site that we're talking about but it was confirmed to SHPO that that is the correct site number and that they are aware that Dawson Surveys did mistakenly place the wrong number where that location is.

COMMISSIONER ANAYA: Thank you, Michael, for saying that on the record.

MS. LUCERO: Mr. Chair, Commissioner Anaya, if I could just draw your attention, it's Exhibit 6, page number 15 there's a clarification memo from SHPO within the packet that clarifies the correct archaeological site number.

COMMISSIONER ANAYA: Thank you, Vicki, for also restating that on the record. Thank you, Mr. Chair.

CHAIR MAYFIELD: Thank you, Commissioner Anaya. Thank you, staff. Commissioners, any other questions of staff? Applicant, do you have something else to add?

MR. SIEBERT: Mr. Chair, Commissioners, maybe we could resolve the open space issue which you've probably figured out already to add a condition that would state that the vacation of this archaeological easement will not result in any diminution of open space for Phase 1. We would agree to that as a condition. Thank you.

CHAIR MAYFIELD: Thank you, Mr. Siebert. This is still a public hearing on the case before us tonight. Is there anybody else from the public wishing to comment on this case? Seeing none this portion of the public hearing is closed.

Commissioners, any other questions of staff or the applicant? Mr. Shaffer, I have one or two questions, please. So we are proposing this vacation of easement under our current County code and is this pretty similar to what we've put in place in our new County code?

MR. SHAFFER: Mr. Chair, I can't speak for the exact provisions in the Sustainable Land Development Code concerning the vacation of plats. Perhaps, Ms. Ellis-Green is here and can speak to it. I believe that the standard that's in the current code comes from state law so I would not imagine that there would be much difference. But I would have to confirm that against the SLDC which I'd be pleased to do so if you'd like me to.

CHAIR MAYFIELD: I think Penny is looking at that right now. Let me ask a second question while she looks for that, Mr. Shaffer. On page three of staff's exhibit, it's just saying that fire protection is by La Cienega Fire District; we have constructed a new fire department out there, haven't we out in Rancho Viejo? Is that still under the La Cienega Fire District or this would now be -- I don't know if we created a whole new fire district? So we do have a whole new fire district out there also.

And, Penny, I don't know if you've found that or not but if it's state statute it should pretty much track with our new code.

MS. ELLIS-GREEN (Growth Management Director): Sorry, Mr. Chair, Commissioners, let's see on Chapter 5, Subdivisions, 5.11.2 is vacation approved plat and it states that any final plat filed in the office of the County Clerk may be vacated or a portion of the final plat may be vacated if the owners of the land propose to be vacated signed and acknowledged statement declaring a final plat or a portion of the final plat to be vacated and the statement is approved by the Board.

CHAIR MAYFIELD: Thank you and I'm going to go off topic a little bit but

SFC CLERK RECORDED 07/30/2014

just a general question for me. So under our new County code because I'm just looking at the water supply, community water, liquid waste, community sewer under the new code though we would allow density of three parcels per acres; would this be applicable to this?

MS. ELLIS-GREEN: Mr. Chair, this is in the Community College District so in the village areas it has lot size of at least three units per acre.

CHAIR MAYFIELD: That new provision in the code will not be applicable?

MS. ELLIS-GREEN: That will not change under the new code.

CHAIR MAYFIELD: Thank you so much. Commissioners, seeing no other questions do we have a motion?

COMMISSIONER STEFANICS: Mr. Chair, I will move for approval with the voluntary condition that was added and agreed upon that no open space would be diminished in the future.

COMMISSIONER ANAYA: Second.

CHAIR MAYFIELD: Motion and a second.

The motion passed by unanimous [4-0] voice vote. Commissioner Chavez was not present for this action.

VII. B 3. CDRC CASE # V/EDP 14-5090 Stanley Cyclone Center. Santa Fe. County - TABLED

VII. B. 4. CDRC CASE # V14-5050 Lloyd and Magdalena Vigil Variance. Lloyd and Magdalena Vigil, Applicants, Requests a Variance of Article III, Section 10 (Lot Size Requirements) of the Land Development Code to Allow a 1.25 Acre Parcel to Be Divided Into two (2) Lots; One Lot Consisting of 0.614 Acres and One Lot Consisting of 0.637 Acres. This Request Also Includes a Variance of Article V, Section 8.1.3 (Legal Access) and Article 8.2.1c (Local Roads) of the Land Development Code. The Road That Services the Property (Calle Rio Chiquito) Does Not Meet the Specifications of Local Lane, Place Or Cul-de-Sac Roads and Does Not Have Adequate Drainage Control Necessary to Insure Adequate Access for Emergency Vehicles. The Property is Located at #15 and #16 Calle Rio Chiquito, within Section 5, Township 20 North, Range 10 East, Commission District 1, Miguel "Mike" Romero, Case Manager

MR. ROMERO: Commissioners, the subject lot was created through a Small Holding Claim on November 28, 1925, and is recognized as a legal lot of record consisting of 1.25 acres, which is identified as 5030 Tract 3 Ysidoro Trujillo. The property is currently vacant.

The Applicants request a variance of Article III, Section 10 of the Land Development Code to allow a 1.25 acre parcel to be divided into two lots; one lot consisting of 0.614 acres

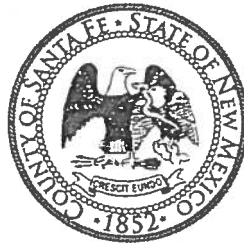




**Daniel "Danny" Mayfield**  
*Commissioner, District 1*

**Miguel M. Chavez**  
*Commissioner, District 2*

**Robert A. Anaya**  
*Commissioner, District 3*



**Kathy Holian**  
*Commissioner, District 4*

**Liz Stefanics**  
*Commissioner, District 5*

**Katherine Miller**  
*County Manager*

**CASE NO. V 14-5050**

**VARIANCE**

**LLOYD & MAGDALENA VIGIL, APPLICANTS**

**ORDER**

**THIS MATTER** came before the Board of County Commissioners (hereinafter referred to as "the BCC") for hearing on June 10, 2014 on the Application of Lloyd and Magdalena Vigil (hereinafter referred to as "the Applicants") for a variance of Article III, Section 10 (Lot Size Requirements) of the Land Development Code (hereinafter referred to as "The Code") to allow a 1.25 acre parcel to be divided into two (2) lots; one lot consisting of 0.614 acres and one lot consisting of 0.637 acres. The Application also sought a variance of Article V, Section 8.1.3 (Legal Access) and Section 8.2.1c (Local Roads) of the Code. The BCC, having reviewed the Application and supplemental materials, staff reports and having conducted a public hearing on the request, finds that the Application is well-taken and should be granted, and makes the following findings of fact and conclusions of law:

1. The Applicants request approval of a variance of Article III, Section 10 (Lot Size Requirements) of the Code to allow a 1.25 acre parcel to be divided into two (2) lots; one lot consisting of 0.614 acres and one lot consisting of 0.637 acres. The Application also seeks a variance of Article V, Section 8.1.3 (Legal Access) and Article 8.2.1c (Local Roads) of the Code.

2. The subject lot was created through a small holding claim on November 28, 1925, and is recognized as a legal lot of record consisting of 1.25 acres, which is identified as 5030 Tract 4 Ysidoro Trujillo. The property is located at #15 and #16 Calle Rio Chiquito, in the Traditional Community of Rio Chiquito, New Mexico.

3. Article III, Section 10 of the Code provides that the minimum lot size in this area is .75 acres per dwelling unit. Lot size may be further reduced to .33 acres with Community Water and Community Sewer.

4. The 1.25 acre parcel is currently vacant with no structures on the lot.

5. On December 20, 2013, the Applicants were attempting to submit an Application for a lot line adjustment on a portion of the subject property, namely the portion of the lot that is proposed for division into a .614 acre lot. During that time staff determined that the 1.25 acre property was divided in 2003 through warranty deed, which is not a correct or legally sufficient process for creating lots. The warranty deeds issued in 2003 purported to transfer one .637 acre tract from the owner to her son, and another .614 acre tract from the owner to her other son. The son who held the deed to the .614 acre tract then sold the property to Applicants. The two properties are currently a single legal lot of record consisting of 1.25 acres.

6. When the Applicants purchased what they thought was a .614 acre parcel in 2012, they were under the impression that they had purchased a legal lot.

7. Article V, § 8.1.3 of the Code states: "Legal access shall be provided to each lot and each lot must directly access a road constructed to meet the requirements of Section 8.2 of the Code. Parcels to be accessed via a driveway easement shall have a twenty (20) foot all weather driving surface, grade of not more than 11%, and drainage control as necessary to insure adequate access for emergency vehicles."

8. Article V, § 8.2.1c (Local Roads) of the Code states: "A local lane, place or cul-de-sac road serves 0 to 30 dwelling units or lots and carries an average daily traffic volume of 0 to 300 vehicles with two (2), ten (10) foot driving lanes with a minimum right-of-way of fifty (50) feet. Local lanes, places and cul-de-sac roads shall be constructed with the same sub-grade and base course specifications as the sub-collector road."

9. The property is accessed from Calle Rio Chiquito. The portion of Calle Rio Chiquito that services the property is approximately 816 ft. in length, and ranges from 9-14 feet in width, and is a dirt driving surface. Calle Rio Chiquito does not meet the specifications of the Code for Local Lane, Place or Cul-de-sac roads, which must have two ten foot driving lanes and six inches of base course. Additionally, Calle Rio Chiquito does not have adequate drainage control necessary to insure appropriate access for emergency vehicles.

10. The Applicants state that they are financially unable to upgrade 816 ft. of Calle Rio Chiquito to County standards by widening the road to include two ten foot driving lanes and to place six inches of base course on the road. Their inability to make the necessary upgrades is due in part to the existence of an acequia that is buried on the south side of the road, thereby preventing widening of the road and making the requisite upgrading objectively impossible. Calle Rio Chiquito currently serves approximately 25 lots and 12 dwelling units.

11. The 1.25 acre property will be served by the Rio Chiquito Water Association rather than a well, thus making it capable of meeting one of the requirements for the creation of lots as small as .33 acres.

12. Due to the size of each proposed lot to be created from the 1.25 acre lot, the New Mexico Environment Department will require installation of an advanced or alternative treatment

system for liquid waste and a community sewer system is not currently available for this location.

13. Applicants and the holder of the deed to the other portion of the 1.25 acre lot each pay taxes on their portion of the lot under separate tax accounts.

14. Article II, § 3 (Variances) of the County Code states: “Where in the case of proposed development, it can be shown that strict compliance with the requirements of the code would result in extraordinary hardship to the applicant because of unusual topography or other such non-self-inflicted condition or that these conditions would result in inhibiting the achievement of the purposes of the Code, an applicant may file a written request for a variance.” This Section goes on to state “In no event shall a variance, modification or waiver be recommended by a Development Review Committee, nor granted by the Board if by doing so the purpose of the Code would be nullified.” Finally, the Section provides that the Board “may vary, modify or waive the requirements of the Code and upon adequate proof that compliance with the Code provisions at issue will result in an arbitrary and unreasonable taking of property or exact hardship, and proof that a variance from the Code will not result in conditions injurious to health or safety.”

15. At the Public Hearing before the BCC on June 10, 2014, staff recommended denial of the requested variance.

16. In the event the Application for a variance was approved, staff recommended imposition of the following conditions of approval:

A. A Plat of survey meeting all County Code requirements shall be submitted to the Building and Development Services Division for review and approval.

B. The Applicant shall comply with all Fire Prevention Division requirements at the time of Plat review.



17. In Support of the Application, the Applicants agreed with staff's recommended conditions of approval.

18. The Applicants own a tract of land immediately adjacent to the .614 acre parcel they attempted to purchase. Applicants committed to apply for a lot line adjustment with their adjacent parcel to increase the size of their lot from .614 to at least .75, thereby bringing the lot the Applicants attempted to purchase into compliance with minimum lot size for the area.

19. The owner of the .637 acre portion of the 1.25 acre tract spoke in favor of the Application. Additionally, Applicants' son also spoke in favor of the Application. No members of the public spoke in opposition to the Application.

20. Strict compliance with the requirements of the Code pertaining to lot size would result in extraordinary hardship to the Applicants who have paid for a portion of a tract, under the mistaken belief that they were purchasing a legal lot of record and who have committed to increase the size of their lot to meet minimum density of .75 acres per dwelling unit, thereby nullifying the grant of the variance of lot size for Applicants' portion of the tract, although the remaining portion of the tract will remain slightly smaller than the minimum lot size, unless and until it is connected to a community sewer system.

21. Strict compliance with the requirements of Article V, Section 8.1.3 (Legal Access) and Section 8.2.1c (Local Roads) of the Code would inhibit Applicants' ability to own a legal lot of record despite having paid for that lot based on a good faith belief that they were purchasing a legal lot of record, when twenty lots and twelve dwelling units utilize the same inadequate private road to access their lots along Rio Chiquito. Even if the lot remained undivided this variance would be necessary to construct a dwelling unit on this residential lot. If a variance is not granted, the land could not be used for residential purposes. Additionally, the

inability to meet code requirements results from a condition of the land, namely the presence of the acequia, which is a physical obstruction to road widening.

22. No evidence was presented of an increased safety hazard created by allowing an additional lot to utilize Rio Chiquito when so many property owners are already utilizing or authorized to utilize the road for access to their dwelling units. Similarly there is no evidence in the record of any risk to health and safety created by allowing two lots of less than .75 acres despite the absence of a community sewer system. The BCC finds no evidence that granting these variances will result in a risk to health and safety.

23. Granting these variances will not nullify the purpose of the Code and the proposed variances are a minimum easing of the Code.

**WHEREFORE**, the Board of County Commissioners of Santa Fe County hereby approves a variance of Article III, Section 10 (Lot Size Requirements) of the Code to allow two lots; one lot consisting of 0.637 acres and one lot to be increased from .614 to at least 0.75 acres by a lot line adjustment with the adjacent lot owned by the Applicants. The BCC also approves a variance of Article V, Section 8.1.3 (Legal Access) and Article 8.2.1c (Local Roads) of the Code subject to the staff recommended conditions as stated in paragraph 16. The motion to approve the variance passed by a 4-0 vote, with Commissioners Anaya, Mayfield, Holian and Stefanics voting in favor of the motion, Commissioner Chavez was not present during the Public Hearing.

### **IT IS SO ORDERED**

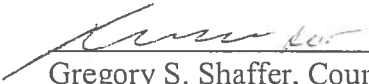
This Order was approved by the Board of County Commissioners of Santa Fe County on this \_\_\_\_ day of \_\_\_\_\_, 2014.

By: \_\_\_\_\_  
Daniel W. Mayfield, Chair

Attest:

\_\_\_\_\_  
Geraldine Salazar, County Clerk

Approved as to form:

  
\_\_\_\_\_  
Gregory S. Shaffer, County Attorney

just a general question for me. So under our new County code because I'm just looking at the water supply, community water, liquid waste, community sewer under the new code though we would allow density of three parcels per acres; would this be applicable to this?

MS. ELLIS-GREEN: Mr. Chair, this is in the Community College District so in the village areas it has lot size of at least three units per acre.

CHAIR MAYFIELD: That new provision in the code will not be applicable?

MS. ELLIS-GREEN: That will not change under the new code.

CHAIR MAYFIELD: Thank you so much. Commissioners, seeing no other questions do we have a motion?

COMMISSIONER STEFANICS: Mr. Chair, I will move for approval with the voluntary condition that was added and agreed upon that no open space would be diminished in the future.

COMMISSIONER ANAYA: Second.

CHAIR MAYFIELD: Motion and a second.

The motion passed by unanimous [4-0] voice vote. Commissioner Chavez was not present for this action.

VII. B 3. CDRC CASE # V/FDP-14-5090 Stanley Cyclone Center. Santa Fe. County - TABLED

VII. B. 4. CDRC CASE # V14-5050 Lloyd and Magdalena Vigil Variance. Lloyd and Magdalena Vigil, Applicants, Requests a Variance of Article III, Section 10 (Lot Size Requirements) of the Land Development Code to Allow a 1.25 Acre Parcel to Be Divided Into two (2) Lots; One Lot Consisting of 0.614 Acres and One Lot Consisting of 0.637 Acres. This Request Also Includes a Variance of Article V, Section 8.1.3 (Legal Access) and Article 8.2.1c (Local Roads) of the Land Development Code. The Road That Services the Property (Calle Rio Chiquito) Does Not Meet the Specifications of Local Lane, Place Or Cul-de-Sac Roads and Does Not Have Adequate Drainage Control Necessary to Insure Adequate Access for Emergency Vehicles. The Property is Located at #15 and #16 Calle Rio Chiquito, within Section 5, Township 20 North, Range 10 East, Commission District 1, Miguel "Mike" Romero, Case Manager

MR. ROMERO: Commissioners, the subject lot was created through a Small Holding Claim on November 28, 1925, and is recognized as a legal lot of record consisting of 1.25 acres, which is identified as 5030 Tract 3 Ysidoro Trujillo. The property is currently vacant.

The Applicants request a variance of Article III, Section 10 of the Land Development Code to allow a 1.25 acre parcel to be divided into two lots; one lot consisting of 0.614 acres

picture that is part of the exhibit that actually shows the number and the site that we're talking about but it was confirmed to SHPO that that is the correct site number and that they are aware that Dawson Surveys did mistakenly place the wrong number where that location is.

COMMISSIONER ANAYA: Thank you, Michael, for saying that on the record.

MS. LUCERO: Mr. Chair, Commissioner Anaya, if I could just draw your attention, it's Exhibit 6, page number 15 there's a clarification memo from SHPO within the packet that clarifies the correct archaeological site number.

COMMISSIONER ANAYA: Thank you, Vicki, for also restating that on the record. Thank you, Mr. Chair.

CHAIR MAYFIELD: Thank you, Commissioner Anaya. Thank you, staff. Commissioners, any other questions of staff? Applicant, do you have something else to add?

MR. SIEBERT: Mr. Chair, Commissioners, maybe we could resolve the open space issue which you've probably figured out already to add a condition that would state that the vacation of this archaeological easement will not result in any diminution of open space for Phase 1. We would agree to that as a condition. Thank you.

CHAIR MAYFIELD: Thank you, Mr. Siebert. This is still a public hearing on the case before us tonight. Is there anybody else from the public wishing to comment on this case? Seeing none this portion of the public hearing is closed.

Commissioners, any other questions of staff or the applicant? Mr. Shaffer, I have one or two questions, please. So we are proposing this vacation of easement under our current County code and is this pretty similar to what we've put in place in our new County code?

MR. SHAFFER: Mr. Chair, I can't speak for the exact provisions in the Sustainable Land Development Code concerning the vacation of plats. Perhaps, Ms. Ellis-Green is here and can speak to it. I believe that the standard that's in the current code comes from state law so I would not imagine that there would be much difference. But I would have to confirm that against the SLDC which I'd be pleased to do so if you'd like me to.

CHAIR MAYFIELD: I think Penny is looking at that right now. Let me ask a second question while she looks for that, Mr. Shaffer. On page three of staff's exhibit, it's just saying that fire protection is by La Cienega Fire District; we have constructed a new fire department out there, haven't we out in Rancho Viejo? Is that still under the La Cienega Fire District or this would now be -- I don't know if we created a whole new fire district? So we do have a whole new fire district out there also.

And, Penny, I don't know if you've found that or not but if it's state statute it should pretty much track with our new code.

MS. ELLIS-GREEN (Growth Management Director): Sorry, Mr. Chair, Commissioners, let's see on Chapter 5, Subdivisions, 5.11.2 is vacation approved plat and it states that any final plat filed in the office of the County Clerk may be vacated or a portion of the final plat may be vacated if the owners of the land propose to be vacated signed and acknowledged statement declaring a final plat or a portion of the final plat to be vacated and the statement is approved by the Board.

CHAIR MAYFIELD: Thank you and I'm going to go off topic a little bit but

which is Tract A and one lot consisting of 0.637 acre, (Tract B. The Applicants claim that the previous property owner's mother deeded portions of the subject property to her two sons. Each son was deeded a portion of a 1.25 acre parcel in 2003, one son sold 0.614 acres to the Applicants in 2012.

On December 20, 2013, the Applicants were attempting to submit an Application for a Lot Line adjustment on the subject property. During that time staff determined that the property was divided in 2003 through warranty deed, which is not the correct process for creating lots. Staff recognizes this property as a single legal lot of record consisting of 1.25 acres. At that time, the Applicants stated when they purchased the property in 2012 they were under the impression that they had purchased a legal lot consisting of 0.614 acres.

The Applicants also request a variance of Article V, Section 8.1.3, Legal Access, and Article 8.2.1c, Local Roads of the Land Development Code. The property is accessed from Calle Rio Chiquito, the portion of Calle Rio Chiquito that services the property is approximately 816 feet in length and ranges from 9-14 feet in width and is a dirt driving surface. Calle Rio Chiquito does not meet the specifications of Local Lane, Place or Cul-de-sac roads, which require two 10-foot driving lanes and six inches of base course. Calle Rio Chiquito does not have adequate drainage control necessary to insure appropriate access for emergency vehicles.

The Applicants state that they are not in a position to upgrade 816 feet of Calle Rio Chiquito to County standards due to the financial obligation it would take and also due to an acequia that is buried on the south side of the road. Calle Rio Chiquito currently serves approximately 25 lots and 12 dwelling units with no right-of-way, ingress/egress through the multiple properties that it serves.

Staff recommendation: Denial of a variance of Article III, Section 10, Lot Size Requirements, of a variance of Article V, Section 8.1.3, Legal Access, and Article V, Section 8.2.1c, Local Roads of the Land Development Code.

The decision of the CDRC was to recommend denial of the Applicant's request. If the decision of the BCC is to approve the Applicant's request, staff recommends imposition of the following conditions. May I enter these into the record?

CHAIR MAYFIELD: Please and read them also, please.

The Conditions are as follows:

1. A Plat of survey meeting all County Code requirements shall be submitted to the Building and Development Services Division for review and approval.
2. The Applicant shall comply with all Fire Prevention Division requirements at time of Plat review.

MR. ROMERO: I stand for any questions.

CHAIR MAYFIELD: Thank you, Mr. Romero. Any questions of staff at this time? Seeing none, is the applicant here tonight with us? Please come forward.

[Duly sworn, Magdalena and Lloyd Albert Vigil, Jr. testified as follows]

MAGDALENA VIGIL: Mr. Chair, Commissioners, the reason that we're here is that we bought a piece of property in good faith from --

CHAIR MAYFIELD: Ma'am, if I could just interrupt you. Will you state your name please for the record?

MS. VIGIL: I'm sorry. Magdalena Vigil, Rio Chiquito. And we bought this property from my husband's cousin. We bought it in good faith. We didn't realize it was going to be a big issue through Santa Fe County. What we're trying to do is we're just trying to make our properties legal recognizing what belongs to my husband's cousin is his and what belongs to us is ours. That way in the near future, maybe later on, we can do a lot adjustment and really that's basically why we're here.

CHAIR MAYFIELD: Thank you, Ms. Vigil. Sir?

LLOYD ALBERT VIGIL, JR: Lloyd Albert Vigil, Jr., 14358 Rio Chiquito, Chimayo, New Mexico. These are my parents and basically like my mom said we bought this piece of property from my second cousins, I guess they would be my father's first cousins and the way it was done, as the way it was read in the summary it kind of explains it pretty good but my dad's aunt owned the full 1.25, she deeded it to her two sons and one of those sons sold their portion to us and so now we're having problems getting a lot line adjustment to add the portion that we bought into land that we already had.

And so my biggest concern with this is that if it was done illegally and everything it should have been caught a long time ago because right now as it stands we pay taxes, separate taxes on two different pieces that are stated in the thing. We pay ours for our .6 and he pays his for his .6, so it's not combined. And I guess in essence what I'm trying to say is that it's only combined through when we wanted to get our line adjusted but yet through the tax department it's separated out into two different pieces. So we're kind of confused as to what was going on and we just want to try and get this problem fixed. Do you have any questions?

CHAIR MAYFIELD: Thank you, Mr. Vigil. Mr. Vigil, do you have anything? Thank you. This is a public hearing. Is there anyone in the public who wishes to comment on this case in front of us tonight? Seeing none, this portion of our public hearing is closed.

Commissioners any questions of staff of the applicant? Penny or whoever from staff, Mr. Romero, I have a question, based on Mr. Vigil's statement right now, Mr. Vigil Jr., they've been paying taxes on two parcels but the way I read this it was separated through a warrant deed; how does that work? I mean, it had to be recorded somewhere if they're having separate taxes levied upon them.

MR. ROMERO: As far as the tax issue is concerned and how the assessor regulates that maybe staff can elaborate a little bit more than I can on that. They are both taxed as separate parcels of property but it is considered one legal lot of record. And why it's taxed as two parcels, at the time in that area for some reason during the assessment time I believe and I don't want to go to much into to get confused or confuse anybody else but the properties are taxed as to different lots but technically and legally it is considered one legal lot of record.

CHAIR MAYFIELD: And, again, my question is how did it get separated on our tax rolls?

MS. ELLIS-GREEN: Mr. Chair, Commissioners, I would assume what happened is when the warranty deeds were recorded, a warranty deed doesn't come through the Land Use Department but I would assume that the Assessor's Office got that information and taxed them separately. But this was done in 2003 and in 2003 in order to divide land you needed to do a survey plat that came through the Land Use Department in order to have legal lots of record that we would recognize.

CHAIR MAYFIELD: So, Ms. Ellis-Green, on that note in 2003 and even today in 2014, if our County Clerk is going to record a warranty deed, I mean shouldn't there be some communication with your department on a situation like this?

MS. ELLIS-GREEN: Mr. Chair, Commissioners, the County Clerk will record anything that you take down. And usually, you know, if somebody was going to buy the full 1.25 acres that would just be deeded, that would be done through a deed and recorded in the Clerk's office so I don't believe that the Clerk's office looks as whether or not there has been an addition.

CHAIR MAYFIELD: Maybe that's something we can address going forward. Also, a question of staff. Calle Rio Chiquito I'm showing, I'm on the CDRC minutes in front of me, I guess what we have handwritten as page 7 but in the printed version it's page 15, it's stating, Ms. Vigil, and staff can help me with this, that Calle Rio Chiquito is a County Road; is this a County road or a private road?

MR. ROMERO: It's a private road, Mr. Chair, Commissioners. It is a private road.

CHAIR MAYFIELD: And this private road serves 25 individual residents?

MR. ROMERO: Mr. Chair, Commissioners, that is correct.

CHAIR MAYFIELD: And staff is certain that this is a private road?

MR. ROMERO: Mr. Chair, Commissioners, yes.

CHAIR MAYFIELD: And then hearing the testimony here tonight also from the Vigils are they asking for this lot line adjustment to make it contiguous to another piece of property that they have to come into compliance with our minimum lot size of .75?

MR. ROMERO: Mr. Chair, I believe doing so they own an adjacent property that's right next to it so they wanted to make that parcel larger and do so from my understanding from the applicants, and staff was able to catch that with this lot currently they're going forward with that it's not a legal lot and they were not able to do any lot line adjustments to this and this was a surprise to the applicants as well.

CHAIR MAYFIELD: It's kind of a surprise to me because we have someone who is trying to come in front to ask for a legal conforming lot – do they have accessible access to this smaller parcel before it's combined if we allowed this combination?

MR. ROMERO: In order to access these lots, they would have to access through Calle Rio Chiquito. There is a flood zone that is to the north of that which they would not be able to access through but their access point would be through Calle Rio Chiquito to both of those lots.

CHAIR MAYFIELD: Thank you, Mr. Romero and Ms. Ellis-Green and maybe it's in the code right now, I'm sorry Penny left so maybe one of you can answer this



for me. Why would we not or what in our code would prohibit somebody from trying adjoin a smaller piece to I guess a parcel that's sizable to now become a conforming lot within our code?

MR. ROMERO: Well, and I think for what they're requesting is, the lot that they purchased through a deed with their portion which I believe is 0.614 acres, it is a traditional part of Rio Chiquito, .75 acres and they do have community water but they don't have community sewer. So it is under the minimum lot. What they're requesting is to recognize that the 0.614 acres as a legal lot as to what they purchased. And the other portion of the property which Mr. Trujillo, and he's here as well, he's also an application, he'd have to have his lot recognized as well as the 0.637 acres. So it's going to go from the one lot to recognizing the two lots. That's what the applicants are requesting.

CHAIR MAYFIELD: And, again, Mr. Romero, I appreciate what you're saying but again the Vigils, we're talking about the Vigil's lot right now that they purchased, they are asking to make this – to include with a contiguous piece of property that they own to now make it bigger than .75 – don't know what the total acreage would be between the two.

MR. ROMERO: Eventually. That would come after – if the Board decides to approve then they would make that attempt afterwards but their intention was to do so, to do that. To do a lot line adjustment to make a different parcel larger than what it already was.

CHAIR MAYFIELD: And if this Commission were to approve that could we put that as a condition that they have to make that parcel now a contiguous piece so it is now bigger than .75 acres?

MR. ROMERO: That would be up to the Board.

CHAIR MAYFIELD: Thank you. Commissioner Anaya.

COMMISSIONER ANAYA: Mr. Chair, bear with me, Mike. I went to the minutes of the CDRC meeting, okay. And at the end a couple of the CDRC members suggested as did verification from staff. I think Ms. Brown commented on the case that they could increase those lots. One lot would have to be increased .1356 and the other lot .113 to get to .75 acre. Okay? So are you with me so far, Mike?

MR. ROMERO: Yes, I am, Commissioner.

COMMISSIONER ANAYA: Okay, so tell me, tell me what the discussion with staff was and the applicant even before CDRC to achieve that. Because that would in essence fix the problem that would be traditional community lots and meet the requirements of the code.

MR. ROMERO: To meet the requirements of the code they would have to .75 acres and that was suggested –

COMMISSIONER ANAYA: Let me read it. Let me read it. So, Ms. Brown and I'm presuming that's you, Rachel? Ms. Brown said if the proposal came forward and the lot left to Gilbert is .75 then the variance is not required. That's the difference between .75 and .614 and .617, that's the other one, the two lots. Okay? Ms. Vigil said she understood that but bought the property in good faith and was not willing to give up her property. So how much property does Ms. Vigil have that is being spoke of in this statement that I just read? She obviously has more than .75 acres; correct?

MR. ROMERO: With the adjoining property, Commissioner?

COMMISSIONER ANAYA: Yeah, that's how I'm reading it. That Ms. Vigil has enough property to increase the lot – to increase both lots to meet the .75 requirement.

MR. ROMERO: Mr. Chair, Commissioner, I'll let the applicant elaborate a little bit more on that as far as the lot size and –

COMMISSIONER ANAYA: That's okay.

MR. VIGIL, JR: So it was my understanding – right now we have, the lot in question is .125 or whatever, it is my understanding that we would give part of our .6 and add to his .6 that way it's point .75 so we would have less. And then after that point we would combine that with our adjacent property.

COMMISSIONER ANAYA: Okay, so you're willing to – let me just ask this question but I think they asked you this question at the CDRC and maybe it wasn't conveyed clear enough or maybe I'm missing something but the bottom line is if you get two lots at .75 each you don't need a variance. And you can achieve .75 on two lots with a lot line adjustment that's an administrative approval and not a Commission approval.

So, Penny, help me out here. Do they fully understand what they can do outside of this variance request? I'm not sure that they do.

MS. ELLIS-GREEN: Mr. Chair, Commissioners. The subject property is 1.25 acres and they also own adjacent property. So if they survey their adjacent property and the 1.25 acres, created a .75 acre tract that the cousin or second cousin owns and then the rest of the 1.25 acres was adjusted into their lot then that is something that they could do. But what they've stated is that they purchased .614. In order to do that if they're leaving the other lot as .75 acres it would only actually be .501 acres out of this 1.25 acres that then go into their adjacent lot. So at CDRC they stated that they purchased the full .614 and paid for that and rather than reducing that size and consolidating it to their adjacent lot that they wanted the acreage that they'd actually purchased.

So a survey would have to be done, if they were going to do without asking for a variance, would have to be done on the whole 1.25 acres and their adjacent tract and through that they would be doing a lot line adjustment so their tract got larger and the other tract that was created was .75 acres.

COMMISSIONER ANAYA: Thank you, Penny. Go ahead.

MR. VIGIL, JR.: So just for verification. The way I understood was we would have to survey our adjacent lot and this one together. However, my only issue is this one together – there's two different owners, so I mean I'm not familiar with all of the process of this but basically just for clarification that's what she's saying, right? Survey all of it together and then separate out .75 for Mr. Trujillo and then the rest would be ours?

COMMISSIONER ANAYA: Well, in order to meet the minimum lot size requirements and not only for purposes of the County but even Environment Department – are you on a community system, did I hear that? That's different, that's different. So, Ms. Ellis-Green let me just ask, are we in a position where the only thing we can do is vote this up or down or is this something that we can have staff have a discussion with associated with providing them options before we have the vote I guess is what I'm asking.

MS. ELLIS-GREEN: Mr. Chair, Commissioner Anaya, I believe that the Board could vote to table this while the applicant meets with staff and looks at the area that could be surveyed and could be done that met code requirements.

COMMISSIONER ANAYA: I'm going to defer to Commissioner Mayfield. This is his area but maybe that's some thought.

CHAIR MAYFIELD: Thank you, Commissioner, I really like that suggestion. But also, Mr. Trujillo who has that lot right now, does he have a contiguous piece of property or his family member have a contiguous piece of property?

MS. VIGIL: No. But can I say something real quick?

CHAIR MAYFIELD: Sure.

MS. VIGIL: In this document it's true, I did say that I was unwilling to give up my property or whatever. After we left here we did talk to Mr. Trujillo and he's here and he has no problem with keeping his property at .63 because his is set for agriculture so that was one of the reasons that we were trying to do this. We already have a surveyor, he already did the survey and it should be in the package. But anyway, that's the reason that our .63 was our 1.10 – we're just trying to improve our land so it really wasn't necessary for us to give up our property because Mr. Trujillo agreed that he was only going to be using his for agriculture and farming so he had intentions of using it for anything else. So that was the agreement between us.

CHAIR MAYFIELD: Thank you for that clarification, Ms. Vigil. So hearing that and staff unless you tell me the code prevents this right now although maybe we can grant a variance, but I'm hearing though is how this land was split up through a warranty deed. Mr. Trujillo will retain his parcel as agricultural use and the Vigils are asking to do a consolidation of this smaller parcel to their – I think you indicated 1. some acres of their existing parcel of land. Can we put that as far as a condition in this? They're going to come with a conforming lot. I'm just trying to ask if it's a contiguous piece of property.

MR. ROMERO: I'm going to let legal answer that question, Mr. Chair, Commissioners.

MR. SHAFFER: Mr. Chair, I don't think you can impose that as a condition with this application that they consolidate those in the future. I believe in consulting with Ms. Ellis-Green they could have brought that forward as their proposal now to do that and it could have been taken care of at the same time. I'm not sure why they chose not to do that but if they're creating two legal lots of record, I don't know that the Board would have the authority to require them in the future and make that consolidation.

CHAIR MAYFIELD: Okay. So then with that, Mr. and Ms. Vigil, knowing that on the suggestion of our attorney we can't impose that one you. Would you all be amenable to going back to staff and relooking at this application? And I'm not going to by any means suggest what you do that's incumbent on you to do that but if your intent is to merge these two pieces of property together and hearing what Mr. Shaffer as I understood just stated you could refile this application a little differently. And, in doing that, Mr. Shaffer, would they have to go through the whole CDRC process again or do they come straight back to this Commission?

I'm going to go back to the public hearing, again, right now. Is there anybody in favor or against this application here tonight? Mr. Trujillo, do you have any comments? Thank you.

MR. SHAFFER: Mr. Chair, to answer your question. Given that that would be a different application it would have to go back through the process again and be renoticed and go to the CDRC.

CHAIR MAYFIELD: Thanks. And I have a question, again, respectfully for staff knowing that it is incumbent on the applicant to do what the applicant needs to do, but does staff ever given any guidance to applicants when they're coming in? And saying something, Hey, maybe you've thought about doing it this way.

MS. ELLIS-GREEN: Mr. Chair, yes we do. And I think the applicant has stated that they want the two .6 of an acre tracts. So the –

CHAIR MAYFIELD: Well that's not what –

MS. ELLIS-GREEN: I'm sorry I didn't hear that. I was having another conversation. If they just stated that but earlier they stated that Mr. Trujillo wanted his .6 and that they wanted their .6.

CHAIR MAYFIELD: Right, Penny, and again how I heard it is Mr. Trujillo is keeping his for agriculture use and they were going to consolidate this piece to a contiguous piece of property that they owned to make it a bigger lot.

MS. ELLIS-GREEN: Mr. Chair, I understand that they are intending to do that but that still creates a .6 acre tract that I understand Mr. Trujillo owns. Whether or not his intention today is to use it for agricultural, if it's a legal lot of record, you can put a house on there. And so in order to create a legal lot of record there it would need to be .75 acre if it was to meet code requirements.

CHAIR MAYFIELD: Thank you, Penny. Commissioner Anaya.

COMMISSIONER ANAYA: Mr. Chair, Penny and/or the applicants, this is on a community water system, correct? So as far as constructing a house it could meet the requirements of EID because it's on the community water system, correct?

MS. ELLIS-GREEN: Mr. Chair, the Environment Department looks at the land area for septic systems so I don't believe they're on a community sewer system. If they were on community sewer and water the minimum lot size would be smaller. So I don't know that the Environment Department has a different standard if you're using a well or if you're a community water system. What they're looking at is the lot size and the number of bedrooms for a septic system.

COMMISSIONER ANAYA: Let me restate it another way. I, myself, own a property that's .6 acres on a community system and I'm eligible to have a septic system it's just a matter of whether I have the distances on the property and the seepage to meet their requirements associated with that parcel. This is no different in this tract than in any other part of the County. EID does approve permits below .75 acres in the State of New Mexico, they're on community systems.

MS. ELLIS-GREEN: Mr. Chair, Commissioner Anaya, I'm not aware of that. We can certainly check with the Environment Department. They do issue permits but whether they're standard septic permits or an advance system is a different question.

COMMISSIONER ANAYA: But that's not our purview. That would be up to – let me say, ask another thing. We issue building permits on lots that are below .75 acres throughout the County.

MS. ELLIS-GREEN: Mr. Chair, Commissioner Anaya, yes, if they're a legal lot of record that is below .75 acres then we look at is what permit they've brought in from the Environment Department. So we just –

COMMISSIONER ANAYA: To verify whether they have the approvals or not.

MS. ELLIS-GREEN: That's correct.

COMMISSIONER ANAYA: Before we – before we would issue our approval, Mr. Chair, Penny.

MS. ELLIS-GREEN: That is correct.

COMMISSIONER ANAYA: So, I'm going to take a stab at a motion. I don't frankly think there was any malice on any of the parties' part. I think it was an awareness issue. The fact that there is community water and the fact that they still have to go through a permitting process and the fact that it's not much less than the .75 acre requirement.

I would move to approval the variance with the condition that there only be the – which one is it? Which one is Mr. Trujillo's tract? The .614 or the .637?

MR. ROMERO: Point 637, Commissioner, Mr. Chair.

COMMISSIONER ANAYA: So I would make a motion to approve the variance with the condition that the other lot has to be increased to .75 acres so that we would have one lot at .75 and the other lot would be .637. But that there be a condition that increases the size of the lot that you have that you have access to add to it that that be increased to .75 acres. That's my motion, Mr. Chair.

CHAIR MAYFIELD: Thank you. As chairman, I'll second that motion. Commissioners, is there any other discussion?

COMMISSIONER ANAYA: So, Mr. Chair, just for clarity.

CHAIR MAYFIELD: Yes.

COMMISSIONER ANAYA: The request in the packet is to have two lots. One at .636 and one at .614; that's the request in the packet. My motion requires as a condition that you add to the .614 to increase that .75; is that right? Is that okay, Mr. Shaffer as point of the motion?

I guess I'm not asking for approval. I'm just asking for the legality of did I state it correctly?

MR. ROMERO: Mr. Chair, Commissioners, speaking with the applicant, you know, that's the applicant's intention once this becomes a legal lot of record to increase the size.

COMMISSIONER ANAYA: I just want to make it a condition.

MR. SHAFFER: Mr. Chair, Commissioner, I just want to clarify is that the intent or I thought I heard the intent was to consolidate it so that they would only have a single lot with the two parcels combined.

COMMISSIONER ANAYA: The request in front of us is that they have two legal lots of record one at .614 and one at .637; that's the request before us. What I'm moving is that the .614 lot, as a condition has to be .750 and the other would be a legal lot of record at .637. That's my motion, Mr. Chair.

MR. SHAFFER: I believe I understand the motion yet a question to me earlier as to whether or not – whether you were proposing – the motion on the table as I understand is that you're in essence requiring a lot line adjustment so that acreage from their current existing lot of record would be added to the lot that is created through the granting of the variance.

COMMISSIONER ANAYA: Correct.

MR. SHAFFER: And the applicant is amenable to that?

MS. VIGIL: Yes.

MR. SHAFFER: So do you still have a question for me, Mr. Chair, Commissioner Anaya?

COMMISSIONER ANAYA: I don't, Mr. Chair. I think we're all on the same page.

CHAIR MAYFIELD: Thank you. So are there any other questions from the Commissioners? We have a motion and a second.

COMMISSIONER STEFANICS: Could the motion then be repeated one more time with the new condition.

COMMISSIONER ANAYA: Mr. Chair, Commissioner Stefanics, I move to approve the variance and to require as a condition so there would be two lots of legal record. One lot at .637 and the other one at .614 would have to be increased to .750. And so there would be two lots.

COMMISSIONER STEFANICS: Could we hear on the record that the applicant will do that?

MS. VIGIL: Yes.

COMMISSIONER STEFANICS: Thank you.

CHAIR MAYFIELD: Thank you. Commissioners, I hope that's clarified. We have a motion and second in front of us.

The motion passed by unanimous [4-0] voice vote. Commissioner Chavez was not present for this vote.

CHAIR MAYFIELD: The motion passes. So, Mr. Trujillo you have your lot and Ms. Vigil you have your lot. And if you can just coordinate with staff to do that other consolidate please. Thank you.

COMMISSIONER STEFANICS: Mr. Chair, before we go on, I'm asking the staff to see if they can turn the air conditioning please.

CHAIR MAYFIELD: I'll second that.

COMMISSIONER STEFANICS: We sent some emails and it hasn't happened yet.

VII. B. 5. CDRC CASE # S 10-5362 Saint Francis South Preliminary Plat and Development Plan. Vegas Verdes, LLC. Applicant, JenkinsGavin Design and Development Inc., (Jennifer Jenkins), Agent, Request Preliminary Plat and Development Plan Approval for Phase 1, of the St. Francis South Mixed-Use Subdivision Which Consists of 5 Lots on 68.94 Acres. The Property is Located on the Northwest Corner of Rabbit Road and St. Francis Drive, within Section 11, Township 16 North, Range 9 East, Commission District 4, Vicente Archuleta, Case Manager [*Exhibit 2: Applicant supplied schematic, master plan map, permitted use list, roundabout, phasing map*]

MS. LUCERO: Thank you, Mr. Chair. I'll be presenting for Mr. Archuleta this evening.

On April 17, 2014, The County Development Review Committee recommended denial of the Applicant's request for Preliminary Plat and Development Plan approval for Phase 1, of the St. Francis South Mixed-use subdivision consisting of 5 lots on 68.94 acres. CDRC Member Katz stated he was uncomfortable with the lack of information regarding this phase of development and his concern was inconsistent development.

The Applicant's original request included a Master Plan Amendment to establish the maximum allowable residential density of 650 dwelling units and 760,000 square feet of non-residential development on 68.94 acres and a variance request. In order to obtain the density requested, a variance of Article III, Section 10 of the Land Development Code would be required.

The Applicant has modified their original request and is now requesting only Preliminary Plat and Development Plan approval for Phase 1 of the St. Francis South mixed-use subdivision which consists of 5 lots on 68.94 acres. Four of the lots which will be created and developed and the remaining tract which will be subdivided and developed in a future phase or phases. Phase 1 as shown on the Master Plan has been relocated from the east side of the property to the west side of the property.

On December 14, 2010, the Board of County Commissioners approved Master Plan Zoning for a mixed-use subdivision consisting of 22 lots on 68.94 acres to be developed in four phases. On January 14, 2014, the BCC approved a request for Master Plat Authorization to proceed with the creation of up to 22 mixed-use lots on 68.94 acres. This allows for the Land Use Administrator to have the authority to administratively approve a specific lot layout for the subdivision once the CDRC and BCC have approved the Preliminary and Final Plat.

SFC CLERK RECORDED 07/30/2014







